

REMARKS

Claims 1-27 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 103(a) Rejections:

The Office Action rejected claims 1-5, 8-14, 17-23 and 26-27 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Peterson et al. (U.S. Patent Application Publication No. 2002/0188576) (hereinafter Peterson) in view of Yoshiba et al. (U.S. Patent No. 7,246,172) (hereinafter Yoshiba), and claims 6, 7, 15, 16, 24, and 25 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Peterson and Yoshiba in view of Agarwal et al. (U.S. Patent Application Publication No. 2005/0125314) (hereinafter Agarwal). Applicants respectfully traverse these rejections and submit that they are unsupported with respect to the pending claims for at least the following reasons.

Regarding claim 1, the cited references fail to teach or suggest a system including a computational resource; a plurality of applications configured to utilize the computational resource; a metering utility configured to measure utilization of the computational resource by a given one of the plurality of applications; and a cost model configured to allocate a first portion of a cost of the computational resource to the given application dependent upon the measured utilization of the computational resource by the given application.

In rejecting claim 1, the Examiner asserts that Peterson teaches all aspects of the claim except for a plurality of applications configured to utilize the computational resource, and asserts that Yoshiba discloses this feature. Applicants respectfully traverse the Examiner's assertions and submit that numerous features of claim 1 do not find support in the cited references.

Peterson is generally directed to “methods and systems of pricing of a session of computer network service usage and the like.” Peterson at para. [0001]. In particular, Peterson discloses that such a session cost is calculated by “totaling the charges for each tier entered during the session.” *Id.* at para. [0013]. Peterson discloses that tiers are divisions of an “on-line usage service session” according to units of time. *Id.* at para. [0014-15]. In operation, the system of Peterson determines how the duration of the session maps to the individual tiers, which are characterized as having incremental charges associated with entering the tier and usage rate charges for usage occurring during the tier. *Id.* at para. [0018-19]; Table 1; FIG. 1.

Peterson’s disclosure is limited to discussion of “a session” and its duration. Peterson does not disclose any aspect of multiple applications configured to utilize a computational resource, or a metering utility that is configured to measure computational resource utilization that occurs by a given one of these multiple applications. To the contrary, Peterson considers utilization only in the aggregate, according to the time duration of a “session.” That is, **Peterson is simply not configured to support any aspect of measuring utilization on a per-application basis when more than one application exists**, as required by claim 1.

Peterson further fails to disclose allocating a portion of a cost of a computational resource to a given one of the multiple applications **dependent upon** the measured utilization of that computational resource by that given application, as required by claim 1. That is, Peterson fails to disclose that the cost of a computational resource itself is allocated to an individual application **based upon that application’s use of the computational resource**. First, Peterson discloses in Table 1 an overall rate structure for session time, application of which results in charges to the session user according to the duration of the session. However, Peterson does not disclose that the rates charged in fact correspond to allocated portions of the cost of the utilized resource itself. That is, Peterson discusses rates that may be charged to a session user according to various time-based tiers of usage. But Peterson does not disclose that these rates derive from the cost of the session resources. In fact, the rate structure disclosed by Peterson appears to be

arbitrary, lacking any described relationship to the costs of providing the resource. That is, Peterson does not disclose that any portion of the resource costs determine any portion of the rates charged to a session user, whether on a per-application basis or otherwise. Applicants note that while this argument was raised in response to the previous Office Action, the Examiner has failed to respond to it.

Second, as noted above with respect to utilization, Peterson discloses only that session costs are determined in the aggregate. That is, Peterson describes determining costs for an entire session. Peterson does not disclose the relationship of the session to particular computational resources or applications that utilize such resources, and specifically does not disclose allocation of resource cost to a given one of several applications dependent upon that given application's resource utilization.

The omissions of Peterson are not remedied by Yoshiba or Agarwal. Yoshiba is generally directed to methods for assigning data transmission paths in a multicast network. Yoshiba at Abstract. Yoshiba specifically discloses that once a flow of data is assigned to a particular path within a network, the link cost of each link along the particular path is adjusted. *Id.* at col. 7, lines 3-5. Yoshiba states that “[i]ncreasing the link cost encourages the algorithm to select other links in subsequent iterations, thereby distributing the link assignment across the network.” *Id.* at lines 6-8.

Thus, in Yoshiba, selection of a path makes links along that path more expensive for selection by subsequent users. But this differs from an embodiment in which a portion of a resource cost is allocated to a given application dependent upon that given application's utilization of the resource. In Yoshiba, the cost of a given path for use by a given flow of data is entirely dependent upon how many times the given path was previously selected for use by other flows of data. That is, in Yoshiba, the cost of the given path for the given flow of data is not dependent upon utilization by the given flow of data. Rather, it is solely dependent on whether the given path has been selected for other flows of data. Thus, regardless of its own degree of utilization, the same given flow of data may see two different path costs depending entirely on whether other flows have

previously been assigned to the same path or not. This differs from and is not suggestive of the requirements of claim 1.

Similar arguments apply to similar independent claims 10 and 19. Thus, for at least the foregoing reasons, Applicants submit that the cited references fail to support the rejection of the independent claims.

Regarding claim 5, Peterson further fails to disclose that the recited computational resource is one of a plurality of computational resources, and that the cost model is further configured to distribute at least a portion of a total cost of providing the plurality of computational resources among the plurality of computational resources, such that each of the computational resources bears a respective cost share of the at least a portion of the total cost. As noted above, Peterson fails to disclose any specific relationship between the cost of providing a computational resource and the charge associated with utilization of that resource. More particularly, Peterson fails to describe any aspect of the distribution of the costs of multiple computational resources among those resources in the manner required by claim 5, and these features are absent from the remaining cited references. Thus, Applicants submit the rejection of claim 5 and similar claims 14 and 21 is unsupported. Applicants note that although this argument was raised in response to the previous Office Action, the Examiner has not addressed it.

Regarding claim 8, Peterson further fails to disclose that the first portion of the recited cost is dependent upon a quality of service of the given application. Applicants note that Peterson fails to make any mention whatsoever of any aspect of this feature. While Yoshiba briefly mentions quality of service in the abstract, Yoshiba fails to disclose that this concept has anything to do with costs allocated to an application. Thus, Applicants submit that the rejection of claim 8 and similar claims 17 and 26 is unsupported. Applicants note that although this argument was raised in response to the previous Office Action, the Examiner has not addressed it.

Applicants further note that the rejections of various ones of the dependent claims are further unsupported by the cited references. However, as the rejections of the independent claims have been shown to be unsupported, further discussion of the dependent claims is unnecessary at this time.

CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant(s) hereby petition for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-76200/RCK.

Respectfully submitted,

/Robert C. Kowert/

Robert C. Kowert, Reg. #39,255
Attorney for Applicants

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8850

Date: August 28, 2008